

LEGAL REVIEW NOTE

LC#: LC0635, To Legal Review Copy, as of
January 4, 2013

Short Title: Establish workers' compensation
holiday for employers for new hires

Attorney Reviewers: Bart Campbell/Todd Everts

Date: January 15, 2013

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

Legal Reviewer Comments:

As drafted, LC0635 may raise potential constitutional issues with the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article II, section 4, of the Montana Constitution and with Article II, section 15, of the Montana Constitution that provides that persons under 18 years old have all of the fundamental rights afforded by the Montana Constitution.

LC0635 provides that an employee under 20 years of age who is discharged during a 90-day probationary period will for workers' compensation benefit purposes receive benefits based upon minimum wage regardless of the fact that the employee may have been receiving wages in excess of the minimum wage. This could result in two employees doing the same work and receiving the same wages in excess of the minimum wage but receiving different workers' compensation benefits if one is under 20 years old and one is 20 years of age or older.

The Fourteenth Amendment provides: "No state shall ... deny to any person within its jurisdiction the equal protection of the laws." Art. II, section 4, provides in part: "No person shall be denied the equal protection of the laws." LC0635 could result in individual workers doing the same work and receiving the same wages receiving unequal benefits under workers' compensation laws

based only on a difference in age.

The Montana Supreme Court in *Reesor v. Montana State Fund*, 2004 Mont. 370, stated:

“We see no reason why a forty-year-old injured worker should receive full PPD benefits pursuant to § 39-71-703, MCA, and a sixty-five-year-old worker with an identical injury should receive only an impairment award due to the fact he has reached social security retirement age. There is no rational basis to deny a class of injured workers a category of benefits based upon their age....Therefore, we conclude that providing PPD benefits to a younger person in Reesor’s situation in the amount of \$23,056.25 under the WCA, but limiting Reesor’s benefit, based on his age, to only \$2,975 pursuant to § 39-71-710, MCA, violates the Equal Protection Clause found in Article II, Section 4 of the Montana Constitution. There has been a failure to demonstrate a rational basis for the infringement of such a constitutionally protected right, therefore, we hold that § 39-71-710, MCA, is unconstitutional.”

Pursuant to Montana Supreme Court's decision in *Reesor*, LC0635, as drafted, may raise potential constitutional conformity issues with the equal protection provisions of the Fourteenth Amendment to the United States Constitution and Article II, section 4, of the Montana Constitution and Article II, section 15, of the Montana Constitution.

Requester Comments: See attached

Everts, Todd

From: Dee Brown <repdee@yahoo.com>
Sent: Monday, January 28, 2013 11:40 AM
To: Aldrich, Ginger; Everts, Todd
Subject: gray sheet response LC06365 0635

I am a teacher and not a lawyer so I believe there is a rational basis for policy providing different benefits to younger, seasonal employees. These young people are less experienced, in better health than any other population, attend school and seek seasonal work in lieu of no work at all. This law would provide an incentive to employers in Montana to hire a young person, train them with valuable future skills and begin their life of being a productive citizen. All they need is for someone to give them a chance.

Thanks for listening, Dee Brown